

Message Text

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ACTION EUR-12

INFO OCT-01 EA-10 ISO-00 CIAE-00 DODE-00 PM-05 H-01
INR-10 L-03 NSAE-00 NSC-05 PA-01 SP-02 SS-15
ICA-11 IO-13 ACDA-12 /101 W
-----119076 281007Z /11

R 280838Z JUL 78
FM USMISSION USBERLIN
TO SECSTATE WASHDC 7371
AMEMBASSY BONN
INFO AMEMBASSY BERLIN
AMEMBASSY LONDON
AMEMBASSY MOSCOW
AMEMBASSY PARIS
AMEMBASSY TAIPEI
AMCONSUL HONG KONG
USMISSION USNATO
USLO PEKING

C O N F I D E N T I A L SECTION 1 OF 3 USBERLIN 1788

E.O. 11652: GDS
TAGS: PDIP, CH, AKB
SUBJECT: CHINESE PROPERTY IN BERLIN

REFS: (A) USBER 1491; (B) HONG KONG 8119 (NOTAL)

SUMMARY: REFTEL GAVE GENERAL REPORT ON POSSIBLE PRC INTEREST
IN ESTABLISHING OFFICIAL PRESENCE IN WESTERN SECTORS OF BERLIN.
IN SO DOING, REFTEL MENTIONED EXISTENCE IN BERLIN OF CHINESE
PROPERTY WHICH BERLIN COURT HAS RECENTLY RE-REGISTERED UNDER
NAME OF PRC. THIS MESSAGE GIVES MORE DETAILED REPORT ON
STATUS OF THAT PROPERTY. QUESTION OF OWNERSHIP OF PROPERTY
SHOULD NOT REPEAT NOT BE CONFUSED WITH QUESTION OF POSSIBLE
PRC PRESENCE IN WESTERN SECTORS OF BERLIN. THAT PROPERTY IN
QUESTION FORMERLY HOUSED CHINESE MILITARY MISSION HAS NO
REPEAT NO EFFECT ON WHETHER PRC MAY ESTABLISH MILITARY
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MISSION OR OTHER KIND OF PRESENCE IN WESTERN SECTORS.
QUESTION OF POSSIBLE PRC PRESENCE IN WESTERN SECTORS IS
ADDRESSED SEPTTEL. END SUMMARY.

1. BY LETTER DATED 12 AUGUST 1977, A BERLIN COURT WROTE
THROUGH THE BERLIN SENATOR FOR JUSTICE TO THE
BRITISH LEGAL ADVISER AS FOLLOWS (INFORMAL MISSION

TRANSLATION):

BEGIN TEXT

LEGAL DEPARTMENT
BRITISH MILITARY GOVERNMENT
1000 BERLIN 19

SUBJECT: BUILT-UP PROPERTY SITUATED AT KURFUERSTENDAMM
218 IN 1000 BERLIN 15 (CHARLOTTENBURG) - LAND
REGISTER OF THE BERLIN DISTRICT OF CHARLOTTENBURG
VOLUME 163, PAGE 5700 -

THE LAND REGISTER OF THE BERLIN DISTRICT OF
CHARLOTTENBURG IN VOLUME 163, PAGE 5700, SECTION I,
FIGURES AS THE PROPRIETOR OF THE BUILT-UP PROPERTY,
SITUATED AT KURFUERSTENDAMM 218, "DAS CHINESISCHE REICH"
(THE CHINESE EMPIRE).

RECENTLY, IN A LETTER ADDRESSED TO THE SENAT OF
BERLIN, THE EMBASSY OF THE PEOPLE'S REPUBLIC OF CHINA
IN THE FEDERAL REPUBLIC OF GERMANY HAS MADE THE REQUEST
THAT THE NAME OF THE PROPRIETOR OF THE ABOVE MENTIONED
BUILT-UP PROPERTY BE CHANGED TO "DIE VOLKSREPUBLIK
CHINA" (THE PEOPLE'S REPUBLIC OF CHINA).

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THE COURT CONSIDERS THIS LETTER TO SUGGEST A NAME
CORRECTION. SUCH A NAME CORRECTION PROPOSING A CLARI-
FICATION OF THE PRESENT SITUATION MAY BE EFFECTED EX
OFFICIO. HAVING ALREADY REQUESTED AND RECEIVED AN
OPINION FROM THE FOREIGN MINISTRY IN BONN THE COURT BE-
GINS WITH THE ASSUMPTION THAT THE PEOPLE'S REPUBLIC
OF CHINA IS NOT A LEGAL SUCCESSOR TO THE CHINESE EMPIRE
BUT RATHER CONSIDERS THESE TWO TO BE IDENTICAL.

IT IS REQUESTED, AS A PRECAUTION, THAT YOU
EXAMINE THE QUESTION WHETHER A NAME CORRECTION IN
SECTION I OF THE LAND REGISTER OF THE BERLIN DISTRICT
OF CHARLOTTENBURG, VOLUME 163, PAGE 5700 I.E.
CHANGING THE NAME INTO "DIE VOLKSREPUBLIK CHINA"
(THE PEOPLE'S REPUBLIC OF CHINA) MAY IN SOME WAY
ENCROACH UPON THE CONTROLLING INTEREST OF THE ALLIED
AUTHORITIES (ARTICLE 2 (C) OF LAW NO. 7, DATED 17
MARCH 1950).

IT IS THEREFORE REQUESTED, IF THIS SHOULD BE
NECESSARY, THAT YOU GRANT CONSENT TO THE EXERCISE
OF GERMAN JURISDICTION IN THIS CASE.

END TEXT

2. ARTICLE 2(C) OF ALLIED KOMMANDATURA LAW NO. 7
READS AS FOLLOWS:

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AMEMBASSY BONN
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C O N F I D E N T I A L SECTION 2 OF 3 USBERLIN 1788

BEGIN TEXT

ARTICEL 2

EXCEPT WHEN EXPRESSLY AUTHORIZED, EITHER GENERALLY
OR IN SPECIFIC CASES, BY THE ALLIED KOMMANDATURA OR
THE APPROPRIATE SECTOR COMMANDANT, GERMAN COURTS SHALL
NOT EXERCISE JURISDICTION IN ANY NON-CRIMINAL CASE

...

(C) IN WHICH THE ISSUES TO BE DECIDED MAY AFFECT
THE RIGHT OF CONTROL OF ANY POWER IN OCCUPATION.

END TEXT

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3. SINCE THE PROPERTY WAS LOCATED IN THE BRITISH SECTOR, THE COURT, PURSUANT TO OTHER PROVISIONS OF LAW NO. 7, REFERRED THIS MATTER TO THE DESIGNATED REPRESENTATIVE (THE BRITISH LEGAL ADVISER) OF THE APPROPRIATE SECTOR (BRITISH) COMMANDANT RATHER THAN TO THE ALLIED KOMMANDATURA. EVEN THOUGH THE MATTER APPEARED TO BE A PURELY BRITISH SECTOR MATTER NOT INVOLVING AN ALLIED CONCERN, THE BRITISH LEGAL ADVISER CONSULTED WITH THE FRENCH AND US LEGAL ADVISERS BEFORE RESPONDING TO THE COURT.

4. LEGAL ADVISERS REVIEWED ALLIED LAW IN QUESTION AND CONCLUDED: (A) A QUESTION CONCERNING THE OWNERSHIP OF THE PROPERTY BY A FOREIGN POWER DID NOT OF ITSELF RAISE MATTERS OF CONCERN TO THE ALLIED KOMMANDATURA;

(B) AN UNCONTESTED APPLICATION FROM THE PRC TO CHANGE THE NAME OF TITLEHOLDER OF THE PROPERTY DID NOT RAISE MATTERS OF CONCERN TO ALLIES; (C) HOWEVER, AS SOVEREIGNS IN BERLIN, WE SHOULD BE INFORMED OF ANY COMPETING APPLICATION FROM THE ROC OR CHALLENGE BY THE ROC OF THE PRC CLAIM. ACCORDINGLY, ON 3 FEBRUARY 1978 BRITISH LEGAL ADVISERS RESPONDED TO BERLIN COURT AS FOLLOWS:

BEGIN TEXT

HAVING DISCUSSED THE MATTER WITH THE AUTHORITIES OF THE AMERICAN AND FRENCH SECTORS, I WISH TO INFORM YOU THAT, AS OF NOW, IT IS NOT CONSIDERED THAT THE APPLICATION MADE BY THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA REQUIRES THE AMTSGERICHT CHARLOTTENBURG TO OBTAIN AUTHORIZATION UNDER ARTICLE 2
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OF ALLIED KOMMANDATURA, BERLIN LAW NO. 7. HOWEVER, THE ALLIED KOMMANDATURA WOULD WISH TO BE INFORMED IF AT ANY TIME THW OWNERSHIP OF THE BUILDING SHOULD BE CLAIMED BY THE GOVERNMENT OF THE REPUBLIC OF CHINA (TAIWAN).

END TEXT

5. SHORTLY AFTER RECEIPT OF LETTER FROM BRITISH,

COURT CHANGED NAME OF TITLEHOLDER OF PROPERTY FROM
CHINESE EMPIRE TO PRC.

6. COMMENT: CONSIDENT WITH ALLIED DELEGATIONS OF
AUTHORITY, DECISION IN THIS MATTER IS A GERMAN ONE.
FRG HAS LONG BEEN AUTHORIZED BY ALLIES TO REPRESENT
INTERESTS OF BERLIN IN INTERNATIONAL MATTERS NOT IN-
VOLVING SECURITY OR STATUS OF BERLIN. GIVING OF ADVICE
BY FRG FOREIGN OFFICE TO BERLIN COURT (AS REPORTED IN
COURT'S LETTER TO BRITISH LEGAL ADVISER) THAT PRC IS
IDENTICAL WITH CHINESE EMPIRE IS CONSISTENT WITH ALLIED
AUTHORIZATION, SINCE ISSUE DOES NOT RAISE QUESTIONS OF
BERLIN'S SECURITY OR STATUS.) END COMMENT

7. FYI: FROM USBER POINT OF VIEW, THIS IS FORTUNATE
RESULT FOR INSTANT CASE, BECAUSE WE HAVE DOUBTS THAT
WE COULD HAVE REACHED AGREEMENT WITH BRITISH AND FRENCH
ON THIS QUESTION. END FYI

8. BY LETTER DATED 16 JUNE, KARL-HEINZ SCHMITZ (LAWYER,
REPRESENTATIVE IN BERLIN HOUSE OF REPRESENTATIVES,
AND SECOND CHAIRMAN OF BERLIN CDU) WROTE TO BRITISH
COMMANDANT REPORTING THAT HE HAD BEEN RETAINED BY
ROC TO PROTECT ROC INTERESTS IN PROPERTY IN QUESTION.
TO HIS LETTER WERE ATTACHED COPIES OF A POWER OF
ATTORNEY AND DECLARATION WITH TYPE SIGNATURE BLOCK OF SHEN
CHANG-HUAN, FOREIGN MINISTER, ROC. BOTH DOCUMENTS ARE PLACE-DATED
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TAIPEI 7 JUNE 1978 AND SHOW "C.H. SHEN" SIGNATURE.
INFORMAL MISSION TRANSLATION OF TEXTS FOLLOW:

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ICA-11 IO-13 ACDA-12 /101 W
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FM USMISSION USBERLIN
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AMEMBASSY BONN
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C O N F I D E N T I A L SECTION 3 OF 3 USBERLIN 1788

BEGIN TEXT

POWER OF ATTORNEY
SHEN CHANG-HUAN
FOREIGN MINISTER OF THE
REPUBLIC OF CHINA

I HEREBY EMPOWER MR. KARL-HEINZ SCHMITZ, ATTORNEY
AT LAW, TO PROTECT THE RIGHTS AND LEGAL INTERESTS OF
THE REPUBLIC OF CHINA WITH RESPECT TO THE PROPERTY AND
BUILDING ERECTED THEREON WHICH BELONG TO THE REPUBLIC
OF CHINA AND FOR DECADES HAVE BEEN CARED FOR BY IT AND
WHICH ARE LOCATED AT 218 KURFUERSTENDAMM CHARLOTTENBURG,
WEST BERLIN AND TO REPRESENT THE REPUBLIC OF CHINA IN
THIS MATTER AND TO NEGOTIATE WITH THE GOVERNMENT
OF THE FEDERAL REPUBLIC OF GERMANY, THE SENAT OF WEST
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BERLIN, AS WELL AS THE BRITISH SECTOR COMMANDANT
IN WEST BERLIN. END TEXT

BEGIN TEXT

DECLARATION

ON 13 APRIL 1978, THE LAND REGISTRY OFFICE OF THE
CHARLOTTENBURG AMTSGERICHTS IN WEST BERLIN, BY MEANS
OF A CORRECTION CHANGED THE NAME OF THE TITLE OWNER
OF LAND AND A BUILDING ERECTED UPON IT WHICH BELONG
TO THE REPUBLIC OF CHINA AND HAVE BEEN CARED FOR IT
FOR DECADES AND WHICH ARE LOCATED ON 218 KURFUERSTENDAMM
CHARLOTTENBURG, WEST BERLIN. THE GOVERNMENT OF THE
REPUBLIC OF CHINA HEREBY DECLARES EARNESTLY
THAT THE GOVERNMENT OF THE REPUBLIC OF CHINA IS,
ACCORDING TO THE TERMS OF THE CHINESE
CONSTITUTION, LEGALLY CONSTITUTED OF THE

ENTIRE CHINESE PEOPLE AND THEREFORE HAS THE DUTY TO PRESERVE ALL STATE PROPERTY WITHIN AND OUTSIDE OF THIS LAND. THE COMMUNIST REGIME THAT HAS TEMPORARILY CONQUERED THE CHINESE MAINLAND CAN IN NO MANNER REPRESENT THE CHINESE PEOPLE. THAT THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY AND THE AUTHORITIES OF WEST BERLIN HAVE SUBMITTED TO THE PRESSURE OF THE CHINESE COMMUNISTS AND PERMIT AGAINST THE WILL OF THE REPUBLIC OF CHINA ITS PROPERTY TO BE CHANGED INTO THAT OF THE PROPERTY OF THE PEOPLE'S REPUBLIC OF CHINA INFURES SERIOUSLY THE INTERESTS OF THE GOVERNMENT OF THE REPUBLIC OF CHINA AND ITS PEOPLE. THE GOVERNMENT OF THE REPUBLIC OF CHINA WILL IN NO WAY ACCEPT THIS RESULT AND DECLARES THAT THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY AND THE AUTHORITIES OF WEST BERLIN MUST ACCEPT
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FULL RESPONSIBILITY FOR THE CONSEQUENCES WHICH WILL FOLLOW. END TEXT

9. COMMENT: TO OUR KNOWLEDGE, SCHMITZ HAS NOT YET CHALLENGED COURT'S FINDING IN FAVOR OF PRC. WE EXPECT COURT TO WRITE THE BRITISH LEGAL ADVISER IN THE EVENT A CHALLENGE IS LODGED. IN THAT EVENT, WE ANTICIPATE THAT BERLIN MISSIONS WILL CONFINE BRITISH REPOSE TO COURT TO AN AUTHORIZATION TO EXERCISE JURISDICTION IN THIS CASE. WE DO NOT REPEAT NOT ANTICIPATE ALLIES STATING A POSITION ON WHETHER PROPERTY SHOULD BE REGISTERED TO PRC OR ROC. END COMMENT. GEORGE

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Message Attributes

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Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
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Handling Restrictions: n/a
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Retention: 0
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Review Content Flags:
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Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 2037445
Secure: OPEN
Status: NATIVE
Subject: CHINESE PROPERTY IN BERLIN
TAGS: PDIP, CH, GE, AKB
To: STATE BONN
Type: TE
vdkgvwkey: odb://SAS/SAS.dbo.SAS_Docs/464a0477-c288-dd11-92da-001cc4696bcc
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Sheryl P. Walter
Declassified/Released
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